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**Subject:** California Secretary of State's Comments on EAC's Pilot Program Testing and Certification Manual  
**Date:** 04/26/2010 05:02 PM  
**Attachments:** Pilot-program-manual(SOS).pdf

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*Secretary of State*  
**DEBRA BOWEN**  
*State of California*

**Comments of Debra Bowen, California Secretary of State, on the Election Assistance Commission Voting System Pilot Program Testing and Certification Manual**

As California's chief elections officer, I appreciate the opportunity to comment on the draft Voting System Pilot Program Testing and Certification Manual. Comments included here on the relationship between the draft manual and the draft UOCAVA Pilot Program Testing Requirements will also be included in my comments on the draft UOCAVA Pilot Program Testing Requirements.

**Section 2.5, Page 13:** Will Manufacturers registered in the regular EAC Manufacturer Registration program be eligible to participate in the Pilot Program certification process? Requiring a second Manufacturer registration process for Pilot Programs seems unnecessary. A clarifying statement should be added.

**Section 3.2.2.2, Page 16:** The first sentence can be read as giving EAC the option to apply standards that predate VVSG 2005 to a pilot program, such as the 2002 VSS. This is prohibited, as beginning in 2008, every application for regular certification has required testing to the VVSG 2005 standards. If the intent is to select the appropriate standards/requirements from among specially developed pilot program standards/requirements, e.g., one set of EAC pilot system standards for kiosk Internet voting systems, another set of pilot system standards for personal computer-based Internet voting, and a third for cell phone and handheld device wireless Internet voting, a clarifying statement should be added. Stakeholders and the public should also have an opportunity to comment on the appropriateness of the selected pilot system standards to test the pilot program voting program in question.

**Section 4.5.1, Page 23:** Section 4.5.1 addresses the handling of voting system "changes." Nothing in the draft manual, however, addresses "extensions," a term introduced in section 1.3.3 of the draft EAC UOCAVA Pilot Program Testing Requirements.

**Sections 4.9-4.13, Pages 24-27:** These sections of this draft Manual require the creation of a trusted build of the pilot program voting system software. The draft UOCAVA Pilot Program Testing Requirements do not indicate that the Manufacturer or VSTL are responsible for the creation of a trusted build. For this Manual to be consistently applied to all Pilot Program voting systems, the testing requirements for those systems should reference the trusted build requirements in section 4.9-4.13.

**Section 5.7, Page 30:** The first sentence is missing words and is ungrammatical. It appears the intent was to convey the following: "If a manufacturer takes no action (by failing either to

request an opportunity to cure or to file an appeal) within 10 calendar days of its receipt of the Decision, the Decision shall become the agency's final Decision on Certification.”

**Section 5.8.2, Page 16:** The wording of the first sentence appears to establish an inappropriate presumption that the Decision Authority will grant approval to all requests it reviews. The final three words, “and approve it,” should be deleted so the sentence reads: “The Decision Authority will review the request.” In addition, the cross reference in the last sentence should be changed from “Section 6.9” to “Section 5.9.1.2.”

**Section 5.9.1.2, Page 31:** The statement that a Manufacturer may request an appeal within 20 days of receipt of the Agency Decision appears to be inconsistent with Section 5.8.2. This section, or both sections, should be rewritten so they are harmonized.

**Section 5.9.3.2, Page 32:** The second sentence begins with a clause that appears to discourage assertions by its Decision Authority that facts are in dispute. The rest of Section 5.9.2.3 contains a confusing statement of the “clear and convincing evidence” standard, which is a well-established legal concept with standard formulations. It may be helpful for EAC legal counsel to review this language.

**Section 6.1, Page 33:** In the final sentence, “random” should be substituted for “potential” so that (3) reads: “random EAC observation of pilot program operations.” “Potential” seems unlikely to provide a meaningful incentive for compliance.

**Section 6.2, Page 33:** A definition should be added for “Quality Control.” In addition, the final sentence is internally inconsistent. A check is not and cannot be “independent” if it “works in tandem with the Manufacturer’s efforts.” The latter phrase should be deleted. In addition, the “balance” concept is drawn from the separation of powers between branches of government in the federal constitutional structure. It is out of place here.

**Section 6.4, Page 33:** The first sentence states that audits are used to verify that deployed system hardware and software are “the same as the sample submitted for certification testing.” This statement, and the provisions in sections 6.4.1 and 6.4.3 scheduling of audits during testing, put the cart before the horse. Audits to verify that what is manufactured, shipped and utilized in the field must start from trusted exemplars of versions builds of hardware and software that have been certified at the end of the process, not on what is initially submitted.

**Section 6.4.5.3.2.5, Page 35:** This section should be renumbered as 6.4.3.3.

**Section 6.4.5.3.3, Page 36:** This section should be renumbered as 6.4.5.3.4.



**Section 6.4.5.3.4, Page 36:** In the second sentence, the words “appear to” should be deleted. Section 6.4.6 concerns findings recommended by the auditors. Since they are at this stage only recommendations, they do not require further qualification.

**Section 6.5, Page 36:** There is a typographical error in the second sentence; “a swell” should be “as well.”

**Section 6.5.1, top of Page 37:** Section 6.5.1 requires Manufacturers to report every anomaly and its root causes. The third sentence describes what the EAC will do with such reports. It is not clear, however, what repercussions would follow for a Manufacturer that fails to make such reports or makes incomplete reports, particularly in the case of a pilot program certification that is good for only a single election. An amendment to the regular certification manual may be appropriate to spell out sanctions in the long-term certification process for failure to comply with the pilot program anomaly reporting requirement for the same or a closely associated voting system.

**Appendix A, Page 3 of 4:** Item 2, requiring an EAC certification label on all production units of a pilot program certified system, appears to conflict with section 4.18.1 of the manual, which states: “Manufacturers are not required to label machines used in EAC Pilot Programs with the EAC Mark of Certification.” Item 7, which requires the Manufacturer to report “malfunctions,” is inconsistent with section 6.5.3, which requires the Manufacturer to report “anomalies” and their causes. “Anomalies” is more inclusive, requiring, for example, reporting of human error as a root cause.

**Appendix A, Page 4 of 4:** The final paragraph under Item 7 should refer to the EAC Pilot Program Testing and Certification Program as well as the EAC Testing and Certification Program.